IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

OP.No. 12297 of 2003(L)

PETITIONER:

K.V. MOHANAN,
PWD CONTRACTOR, KAVUNGAL HOUSE,
KODAKARA P.O., THRISSUR DISTRICT.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. CHIEF ENGINEER,
PUBLIC WORKS DEPARTMENT,
BUILDINGS AND LOCAL WORKS,
THIRUVANANTHAPURAM.

3. SUPERINTENDING ENGINEER,
PUBLIC WORKS DEPARTMENT,
BUILDINGS AND LOCAL WORKS, CENTRAL CIRCLE,
THRISSUR.

4. EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, BUILDINGS DIVISION,
THRISSUR.

BY GOVERNMENT PLEADER SMT. K.R.DEEPA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 20997/2003 IN OP NO. 12297/2003 L.

DISMISSED

14/06/2007. SD/- KURIAN JOSEPH, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE SELECTION NOTICE BEARING NO. D2/5643/97 DT. 27/2/98 TO THE PETITIONER.

EXT.P2. COPY OF THE ACKNOWLEDGEMENT FORM OF HANDING OVER THE SITE TO THE PETITIONER BY THE ASST. ENGINEER, PWD SPECIAL BUILDINGS SECTION, IRINJALAKUDA.

EXT.P3. COPY OF THE JUDGMENT DT. 3/1/2000 IN OP NO. 29169/99.

EXT.P4. COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE R3 ON 27/4/99.

EXT.P5. COPY OF THE ORDER DT. 13/1/00 BY THE R4 TO THE PETITIONER.

EXT.P6. COPY OF THE JUDGMENT DT. 25/1/00 IN OP NO. 2728/00.

EXT.P7. COPY OF THE LETTER DT. 11/08/00 TO THE R3 BY THE R4.

True copy

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KURIAN JOSEPH, J.

O.P.No. 12297 of 2003

Dated this the 14th day of June, 2007

JUDGMENT

The challenge is on Ext.P13 notice issued to the petitioner whereby the petitioner has been directed to remit an amount of Rs.30,38,644/- excluding the cost of balance departmental materials, which is said to be the amount represented by the risk and cost for the re-arrangement of the work. It is also stated that in case the petitioner did not remit the amount recovery steps should be initiated. It is now settled law by several decisions of this court including the one reported in Paily v. State of Kerala, 2000 (3) KLT 343 that the respondents cannot take revenue recovery steps to recover the amount found by them to be due from the petitioner. For that purpose they have to get a decree from the civil court in their favour. Likewise if the petitioner is aggrieved by the termination of the contract at his risk and cost or the adjustment of the security deposit, he also has to move the civil court. In the light of the above decision, Ext.P13 is quashed without prejudice to the liberty to the

petitioners and the respondents to take appropriate action in accordance with law, making it further clear that in the event of either party approaching the civil court the period during which the writ petition was pending before this court shall be excluded while computing the period of limitation.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

ahg.

KURIAN JOSEPH, J.

O.P.NO.12297/2003

JUDGMENT

14th June, 2007